



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/214/B/15-RA

984

Date of Issue 18/07/2018

ORDER NO. 442/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 21.06.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri K. Muthiah

Respondent : Commissioner of Customs, Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 12/2015 dated 13.04.2015 passed by the Commissioner of Customs & C. Excise (Appeals-2), Trichy.



ORDER

This revision application has been filed by Shri K. Muthiah (herein after referred to as the Applicant) against the order no C. Cus No. 12/2015 dated 13.04.2015 passed by the Commissioner of Customs (Appeals), Trichy.

2. Briefly stated the facts of the case is that the applicant arrived at the Chennai Airport on 12.02.2014. Examination of his hand baggage resulted in the recovery of a gold bar taped at the waist under his pants weighing 100 gms valued at Rs. 3,06,500/- (Rupees Three lakhs Six thousand Five hundred).

3. The Original Adjudicating Authority vide Order-In-Original No. 06/2015 dated 29.01.2014 ordered absolute confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 50,000/- under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 12/2015 dated 13.04.2015 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application interalia on the following grounds that;

5.1. The Applicant contends that the gold bar was kept in the pocket and it was not concealed; There was no intention to conceal the gold; In the case of Mahesh B. Mali vs Commissioner of C. Ex. Pune reported in 2012 (286) E. L. T. 375 (Tri-Mumbai) the Hon'ble tribunal has held that "concealment would imply a special effort on the part of the Appellant which is not there in the instant case. Concealment can be for different purpose as such it is not always a violation of law, it could also be for security. In the absence of any special efforts the provisions of section 111 (e) and (i) are not attracted.; The Appellate authority failed to appreciate that there is a difference between complete prohibition and restriction; When goods are not prohibited the discretion of allowing the goods on redemption fine and penalty has to be exercised; The applicant is the owner of the goods and not a carrier; The allegation of non-declaration was contested by the applicant during the personal hearing held on the day of seizure as he was intercepted at the entrance of the baggage hall.

5.3 The Revision Applicant cited various assorted judgments in support of his case and prayed for re-export of the gold on redemption fine and penalty.



6. A personal hearing in the case was scheduled to be held on 05.07.2018, the Advocate for the respondent Shri N. Manickam in his letter dated 21.06.2018 informed that the cases may be decided on the merits based on the grounds of the Revision Application as they were unable to attend the personal hearing in person. Nobody from the department attended the personal hearing.

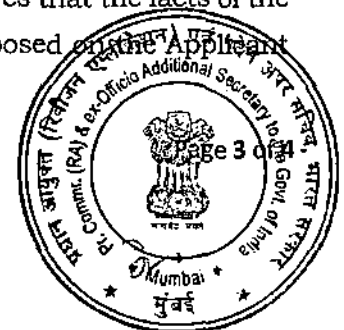
7. The Government has gone through the facts of the case. In the interest of justice, delay of 25 days is condoned and revision application is decided on merits. The goods were not properly declared by the passenger as required under Section 77 of the Customs Act, 1962. Under the circumstances confiscation of the goods is justified.

8. However, the Applicant was not intercepted while trying to exit the Green Channel. There is no allegation of the Applicant trying to pass through the green channel. The ownership of the gold is not disputed. Government, also observes that the gold was not ingeniously concealed. The Applicant is not a frequent traveler, and there are no previous offences registered against him. Further, The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant.

9. Further, There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for release of the gold on payment of redemption fine and reduced personal penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified and the confiscated goods are liable to be allowed on redemption fine and penalty.

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10. In view of the above, Government allows redemption of the confiscated gold bar in lieu of redemption fine. The gold bar chain weighing 100 gms valued at Rs. 3,06,500/- (Rupees Three lakhs Six thousand Five hundred) is ordered to be redeemed on payment of redemption fine of Rs. 1,00,000/- (Rupees One lakh) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant



is therefore reduced from Rs. 50,000/- (Rupees Fifty thousand) to Rs.25,000/- (Rupees Twenty Five thousand) under section 112(a) of the Customs Act,1962.

11. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

12. So, ordered.

(Handwritten signature)
21.6.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁴⁴² /2018-CUS (SZ) /ASRA/MUMBAI,

DATED 21.06.2018

To,

Shri K. Muthiah
s/o Karuppiyah
No. 160, West 3rd street,
Pudukottai-622 001.

Copy to:

1. The Commissioner of Customs, Trichy
2. The Commissioner of Customs & C. Excise (Appeals-2), Trichy.
3. Sf. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

Attested

(Handwritten signature)
18/7/18
SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

